

## The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DIANNE KELLEY and KENNETH HANSEN, )  
Plaintiffs, )  
v. )  
MICROSOFT CORPORATION, a Washington corporation, )  
Defendant. )  
No. C 07-475 MJP  
DECLARATION OF STEPHEN M.  
RUMMAGE IN CONNECTION  
WITH PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION  
***Note on Motion Calendar:***  
December 19, 2007

Stephen M. Rummage declares as follows:

1. ***Identity of Declarant.*** I am a partner in the law firm of Davis Wright Tremaine LLP. I am one of counsel of record for defendant Microsoft Corporation in this matter. I make this Declaration based on my personal knowledge for the purpose of authenticating the documents attached to this Declaration.

2. ***Articles Concerning Windows Vista.*** In connection with this litigation, counsel for Microsoft, including lawyers and paralegals within my firm, have researched online and print media reports concerning Windows Vista that were available during the proposed class period. As a result of our research, we have collected a variety of articles. I am attaching true and correct copies of a sample of these articles as Exhibit A. The pages within Exhibit A in which each article appears are as follows:

- Consumer Reports (November 2006): 5-14;
  - Consumer Reports (January 2007): 15-17;

**DECLARATION OF STEPHEN M. RUMMAGE (C 07-475 MJP) — 1**  
DWT 2170811v1 0025936-000689

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- 1     •     The Wall Street Journal (January 18, 2007):                 18-20;
- 2     •     The New York Times (April 20, 2006):                 21-24;
- 3     •     PC World (March 31, 2006):                             25;
- 4     •     ZDNet Computer Shopper (September 1, 2006):     26-33;
- 5     •     Detroit Free Press (January 29, 2007):             34-39;
- 6     •     PCmag.com (September 6, 2006):                     40-42;
- 7     •     ARS Technica (October 24, 2006):                     43-45;
- 8     •     PC World (May 24, 2006):                             46-47;
- 9     •     Kim Komando, USA Today (Nov. 16, 2006):         48-49;
- 10    •     PC World (October 2006):                             50-52;
- 11    •     PC World (November 2006):                             53-56.

12           3.     ***Web Pages Available During the Class Period.*** In addition to researching  
 13     newspapers and periodicals, lawyers and paralegals representing Microsoft in this matter also  
 14     obtained historical materials from the Internet Archive. The Archive, which can be accessed  
 15     at [www.archive.org](http://www.archive.org), describes itself as follows: “The Internet Archive is a 501(c)(3)  
 16     nonprofit that was founded to build an Internet library, with the purpose of offering permanent  
 17     access for researchers, historians, and scholars, to historical collections that exist in digital  
 18     format.” By accessing the Internet Archive, we were able to find, among other things, the  
 19     Web Pages attached as Exhibit B, identified and dated as follows:

- 20    •     eMachines Web Page (available October 30, 2006):     58-62;
- 21    •     Toshiba Web Page (available November 11, 2006):     63-65;
- 22    •     Acer Web Page (available July 4, 2006):                 66-71;
- 23    •     Sony Web Page (available December 21, 2006):       72-77;
- 24    •     Fujitsu Siemens Web Page (available October 20, 2006): 78-81;
- 25    •     Staples Web Page (available December 30, 2006):     82-83;
- 26    •     Lenovo Web Pages (available December 9, 2006):     84-89.

1 Exhibit B includes true and correct copies of archived Web Pages downloaded by members of  
 2 the Microsoft legal team at various times since the filing of this lawsuit. The available date  
 3 for the Web Page can be identified by the numbers immediately after the Internet Archive  
 4 address that appears on each page. The Internet Archives explains its date convention as  
 5 follows: "Pay attention to the date code embedded in the archived url. This is the list of  
 6 numbers in the middle; it translates as yyyyymmddhhmmss. For example in this url  
 7 <http://web.archive.org/web/20000229123340/http://www.yahoo.com/> the date the site was  
 8 crawled was Feb 29, 2000 at 12:33 and 40 seconds." See  
 9 [http://www.archive.org/about/faqs.php#The\\_Wayback\\_Machine](http://www.archive.org/about/faqs.php#The_Wayback_Machine). Thus, on the first page  
 10 appearing in Exhibit B, the lower left hand corner contains the entry:  
 11 <http://web.archive.org/web/20061030235043>, which indicates that the Web Page in question  
 12 was accessible on the Web on October 30, 2006 (i.e., "20061030").

13       4.     ***Recent Windows Vista Advertising.*** Since this lawsuit began, original  
 14 equipment manufacturers have continued to advertise PCs pre-installed with Windows Vista  
 15 Home Basic. For example, I am attaching as the first page in Exhibit C a copy of the lower  
 16 half of page A12 of The New York Times dated Tuesday, October 9, 2007, which I happened  
 17 to observe as I read the paper that day. In this advertisement for Dell computers, Dell  
 18 advertises both a desktop and a laptop pre-loaded with "Genuine Windows Vista® Home  
 19 Basic." Each of these systems offers an upgrade to "Windows Vista® Business" for a price  
 20 of \$99.00. After seeing that advertisement, members of the defense team in this case obtained  
 21 other examples of systems currently offering Windows Vista Home Basic. True and correct  
 22 copies of sample Web Pages are attached in Exhibit C, including Web Pages for Gateway,  
 23 Radio Shack, WalMart, Hewlett Packard, Toshiba and Amazon.com.

24       5.     ***Kelley Deposition Transcript.*** I took the deposition of Dianne L. Kelley on  
 25 November 2, 2007, in our offices in Seattle. I am attaching as Exhibit D a true and correct  
 26 copy of excerpts of the transcript of that deposition, which accurately reflects Ms. Kelley's  
 27 testimony, as well as Exhibits 4, 5, and 7 to Ms. Kelley's deposition, showing the positioning

1 and text of the small “Windows Vista Capable” sticker affixed on the inside of the laptop  
2 computer that she purchased for her daughter.

3       6.     ***Deposition of Kenneth Hansen.*** On November 7, 2007, my co-counsel,  
4 Charles Casper, took the deposition of Kenneth G. Hansen in Chicago, Illinois. I am  
5 attaching as Exhibit E a true and correct copy of excerpts of the transcript of that deposition.

I declare under penalty of perjury that the foregoing is true and correct.

7 Executed this 19th day of November, 2007, at Seattle, Washington.

9 /s/ Stephen M. Rummage  
STEPHEN M. RUMMAGE

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